

**Emanuel Lutheran Charity Board d/b/a Emanuel Hospital and Rosetta Sebastian. Case 36-CA-3539**

29 February 1984

**DECISION AND ORDER**

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER

On 26 March 1981 Administrative Law Judge James S. Jenson issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed limited exceptions and a statement in opposition to exceptions filed by the General Counsel.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.<sup>1</sup>

**ORDER**

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

<sup>1</sup> Subsequent to the issuance of the judge's decision in this proceeding, the United States Supreme Court issued its decision in *NLRB v. Hendricks County Rural Electric Membership Corp.*, 454 U.S. 170 (1981), finding that there is a reasonable basis in law for the Board's practice of excluding from collective-bargaining units only those confidential employees with a "labor nexus," while rejecting any claim that all employees with access to confidential information are beyond the reach of Sec. 2(3)'s definition of "employee."

In finding that the alleged discriminatee, Rosetta Sebastian, was a confidential employee within the definition historically applied by the Board, we agree with the judge that, particularly in the absence of union animus, the Respondent fulfilled whatever obligation it had to Sebastian, assuming she was entitled to the protection of the Act, and would also find it unnecessary to decide the question expressly left open by the Supreme Court in *Hendricks County*, above, of whether such protection actually inures to confidential employees.

**DECISION**

**STATEMENT OF THE CASE**

JAMES S. JENSON, Administrative Law Judge: This case was tried in Portland, Oregon, on October 28, 1980. The complaint, which was issued on May 19, 1980, pursuant to a charge and amended charge filed on October 26, 1979, and May 19, 1980, respectively, alleges, in substance, that the Respondent violated Section 8(a)(1), (3), and (4) by terminating Rosetta Sebastian because she supported the Union or, alternatively, because of its concern about her potential access to confidential material and its belief that she voted or attempted to vote in a Board election, thereby interfering with the Board's or-

derly election process. The Respondent admits that Sebastian was told that she could not remain in the position of personnel assistant after November 30, 1979,<sup>1</sup> but denies Sebastian was terminated, claiming instead she was given the opportunity to transfer to other available positions within the hospital which did not entail access to confidential information, which she failed to do. All parties were afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs were filed by the General Counsel and the Respondent and have been carefully considered.

On the entire record in the case and from my observation of the witnesses and their demeanor, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

Emanuel Lutheran Charity Board d/b/a Emanuel Hospital is engaged in the operation of a nonprofit hospital in Portland, Oregon. In the past 12 months, the Respondent derived gross revenue in excess of \$1 million and purchased and received goods and materials valued in excess of \$50,000 directly from sources outside Oregon or from suppliers within Oregon which in turn obtained such goods and materials directly from sources outside Oregon. The Respondent admits, and it is found, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

It is admitted and found that Retail Employees Union Local 1092, Professional Division, herein called Local 1092, is a labor organization within the meaning of Section 2(5) of the Act.

**III. ISSUES**

1. Whether Sebastian is a confidential and/or managerial employee.
2. Whether Sebastian is entitled to the Act's protection.
3. Whether Sebastian was removed from the position of personnel assistant because she favored the Union or because of the Respondent's belief she voted or attempted to vote in a Board election, thereby interfering with the Board's orderly election process; or whether her removal was justified because of a conflict of interest since she had access to confidential matters in the field of labor relations.
4. Whether the Respondent was obligated to offer Sebastian a substantially equivalent position.

<sup>1</sup> All dates hereafter are in 1979 unless stated otherwise.

## IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Setting*

The Respondent operates a nonprofit hospital in Portland, Oregon, employing approximately 1900 employees. The Respondent has six collective-bargaining agreements with various labor organizations. Local 1092 represents the employees in two bargaining units, one covering various "professional-technical" employees and the other covering pharmacy personnel. James McIntosh is the Respondent's director of personnel services and Ann Toutges is the compensation manager. The Respondent admits, and it is found, that they are supervisors and agents of the Respondent. Fay Meski is the Respondent's employment manager; Vernita Gilmore is the administrative secretary to the vice president of administration and was the Respondent's election observer during the election held on October 18; Darrell Coffey, who is employed by Metropolitan Hospitals, Inc., was Local 1092's observer at the same election; Michael Hereford is chief executive officer of Local 1092; and Lon Imel is a business representative for the Local.

Pursuant to a petition for an election filed with the Board in Case 36-RC-4234 on September 11, the Respondent and Local 1092 entered into a Stipulation for Certification Upon Consent Election, providing for an election to be held on October 18 in the following unit:

All office clerical employees of the employer at its Portland, Oregon facilities, but excluding all other employees, professional employees, confidential employees, technical employees, guards and supervisors as defined in the Act.

Pursuant to said agreement, the election was held on that date. The tally of ballots shows the Union lost the election by a count of 56 to 113, with 11 challenged ballots, which were insufficient in number to affect the results of the election. The Union filed objections to the election, which were subsequently withdrawn.

The record shows that sometime prior to the election, but after the Union had received a copy of the *Excelsior* list from the Respondent, Imel called the Board agent in charge of the election regarding the fact that the clerical employees in the personnel office were not listed.<sup>2</sup> Whether the Board agent undertook to investigate the fact as Imel understood is not on the record. However, between the morning and afternoon voting sessions on October 18,<sup>3</sup> Hereford and Imel went to McIntosh's office to discuss the fact that the names of the personnel office employees were not on the voting list. It is clear from the testimony of Hereford, Imel, and McIntosh, which is mutually corroborative, that McIntosh informed the union officials that the Respondent had not denied and would not deny anyone the right to vote and, if the Respondent did not think an employee was eligible, that individual's ballot would be challenged. As the union representatives left, Hereford told Sebastian that she

could vote. Sebastian testified that a week prior to the election she had told another employee, Kevin Smith, that she, Sebastian, could not vote because she was a personal and confidential employee. She testified another employee, Karen Finley, told her that the union president said she could vote. According to Sebastian, a couple of days before the election she told Toutges that a couple of employees had approached her and that one had said that she could vote, and asked if that were true. According to Sebastian, Toutges told her, "No, you are [a] personal and confidential employee and that you cannot vote." She claimed that Toutges' response to the fact that Karen Finley had told her the Union said she could vote was that "the Union lies." Toutges, who impressed me as the more reliable of the two, denied that she ever told Sebastian that she could not vote, or that she accused the Union of lying. Sebastian further testified that on the afternoon of the election Ann Thomas, the receptionist in personnel, reported that she had asked McIntosh if she could vote, and that she was told, "We could not vote because we worked for him." Thomas did not testify, and McIntosh denied he ever commented to anyone in the personnel department regarding their eligibility to vote. He testified that Thomas asked whether the people in the personnel office were on the eligibility list, and that he responded no, that in the Company's opinion they were confidential employees and not a part of the unit. As noted, Thomas was not called as a witness. An inference adverse to the party who fails to call witnesses otherwise available to it, or neglects to explain the failure to call such witnesses, has been established law since the early days of the Board. *Freuhauf Trailer Co.*, 1 NLRB 68 (1935), reversed 85 F.2d 391 (6th Cir. 1936), reversing circuit and enforcing the Board 301 U.S. 49 (1937). I have considered this factor in crediting Toutges and McIntosh over Sebastian. Accordingly, the hearsay testimony is not credited.

Shortly after 5 p.m. on October 18, Sebastian proceeded to take her usual route to the employee parking lot, and in doing so entered the opposite end of the "auditorium" or "recreation room" where the election was being conducted. She had noticed a sign so stating and, on entering, observed the Board agent in charge of the election and the two election observers at the far end of the room. The Board agent asked if she was there to vote, to which Sebastian responded "that I could not vote, I was a personal and confidential employee." After asking for her name and ascertaining that it was not on the voting list, the Board agent informed Sebastian that if she wanted to vote she would be protected and explained the challenged ballot procedure. According to Sebastian, she responded that, while she wanted to vote, she felt she could not and, as she turned to leave, stated, "I hoped that the Union gets in."

The morning of October 19, Gilmore, the Respondent's election observer, reported to McIntosh the fact that Sebastian had appeared at the polling place the previous day and expressed support for the Union. McIntosh asked for, and Gilmore prepared, a written statement concerning the incident. McIntosh had heard from others that Sebastian had made statements supporting the

<sup>2</sup> Coffey testified he told the clerical employees in personnel, including Sebastian, that they were eligible to vote.

<sup>3</sup> The voting sessions were from 6:30 to 8 a.m. and 3 to 5:15 p.m.

Union. Therefore, he decided to talk to Sebastian about it, because

. . . I could not have anybody working in that kind of a position who would actually support the Union. It would be a conflict of interest. With the kinds of issues I had to deal with it just, to me, was ridiculous to have somebody working directly for me and handling that kind of information when I was in an adversary position after they had expressed support for my adversary.

Accordingly, on October 24, McIntosh called Sebastian to his office. Toutges was also present. While there is some conflict in the testimony of Sebastian on the one hand and McIntosh and Toutges on the other hand, the substance of the conversation was to the effect that Sebastian had supported the Union contrary to McIntosh's instruction that those in the personnel area should maintain a position of neutrality throughout the union campaign;<sup>4</sup> that Sebastian stated she had not supported the Union in previous elections,<sup>5</sup> but that she actively supported the Union this time because of her own personal grievances;<sup>6</sup> and that McIntosh expressed his view that she was involved in a conflict of interest and he could no longer trust her to continue as his personnel assistant typing confidential matters, and that she should therefore transfer out of the personnel department to a nonconfidential position. Sebastian asked about filing a grievance, and was told she could and that it would be handled by Executive Vice President Behn instead of McIntosh because of his involvement. Sebastian stated she would resign; however, Toutges encouraged her to think it over for a few days and let them know about pursuing transfer possibilities.<sup>7</sup>

October 24 was on a Wednesday. It appears Sebastian took the next 2 days off as sick leave, with Toutges' knowledge. She requested, and was granted, the following week as vacation. Sebastian requested additional time to attend her father's funeral. Having failed to hear from Sebastian since October 24, on November 14, McIntosh wrote her the following letter:

Dear Rosetta,

As we discussed on October 24, 1979, you may feel free to apply for transfer to available openings at Emanuel, excluding confidential positions.

<sup>4</sup> McIntosh was afraid that, if people working in personnel were to express their opinion one way or the other regarding the union campaign, there was a chance the election might be set aside.

<sup>5</sup> There had been similar elections in 1977 and 1978 which the Union had lost.

<sup>6</sup> Sebastian had not been promoted to "employment specialist," and had received only a 1-week vacation in 3 years.

<sup>7</sup> While Sebastian claimed McIntosh accused her of going to the polling area to vote, both McIntosh and Toutges, whom I credit, denied the subject of voting in the election was mentioned. In this regard, McIntosh already had Gilmore's statement to the effect that Sebastian had told the Board agent she had not come to the polling place to vote. I doubt, in these circumstances, that McIntosh would have accused her of trying to vote. Rather, I view Sebastian's testimony along that line to be a fabrication in an attempt to bolster the alleged illegal character of the conversation.

Ms. Meske informs me that you have not contacted her to investigate any possibilities. I want to remind you that it is necessary for you to contact and keep in touch with the Employment Manager if you do desire employment at Emanuel.

Please contact Ms. Meske should you wish to pursue employment in a different position with the hospital.

According to Sebastian, she called McIntosh on a Friday<sup>8</sup> and told him that she would be back to work on the following Monday. She stated that, after expressing sympathy over her father's death, he responded that "it was not necessary for me to come in that I should use this time to find another job." She testified that, when she stated she needed the money, McIntosh informed her that she would be paid until November 30. McIntosh testified his only recollection of the call was that he encouraged her to call Employment Manager Meski about other employment opportunities in the hospital. It appears that Sebastian called Meski on the same date regarding any openings. Meski informed her of the openings listed on the employment opportunities sheet which is published daily. Sebastian was not interested in either admitting clerk opening since the jobs were at a lower grade (7 as opposed to 8 which she had been), and paid less than she had been receiving, and also because one of the positions was not full time. She was apprised of another grade 8 or 9 opening as administrative secretary to the vice president of nursing services, but that the Respondent would not consider her for that job because it involved personal and confidential information and because taking shorthand was required and Sebastian lacked that skill. Meski testified that, while she told Sebastian to keep in touch regarding any further openings, she was contacted by Sebastian only the one time. On the other hand, Sebastian claimed she called Meski a second time and was told no comparable positions were available, but to keep checking. She also called Employment Specialist Evelyn Foreman about November 24 and was advised of several clerk positions that were available. Sebastian claimed her roommate, who worked in patient accounts, brought the employment opportunity sheet home on a daily basis, and that the only comparable job listed was the one as administrative secretary to the vice president of nursing services, which Meski said she was not qualified for.<sup>9</sup> It is clear that Sebastian was familiar with the transfer procedures within the hospital, and that she never came back to the hospital after October 24.

#### *B. Sebastian's Employment Status*

While counsel for the General Counsel has not conceded Sebastian was a confidential employee, she argues that even if she is a confidential employee the Board "has consistently held that like other employees, confi-

<sup>8</sup> Apparently on November 16, although both she and McIntosh later placed the call on or about November 19, a Monday.

<sup>9</sup> Whether the job was indeed a "confidential" one within the Board's definition was not explored on the record.

dentials are protected by Section 7 of the Act." The Respondent contends that Sebastian was a confidential employee who also performed managerial functions and as such was not entitled to the protections of the Act. It contends further that her removal from her confidential position was justified since there was a conflict of interest on her part, and that she had an opportunity to transfer to a nonconfidential position, which she failed to do.

There can be no question but that Sebastian was a confidential employee with a "labor nexus." She was the assistant to Director of Personnel Services McIntosh, who "had overall responsibility for all of the personnel administration, industrial relations, labor relations affairs and including acting as spokesman for the hospital in negotiations, labor contract administration, safety, development of personnel policy, establishment of wage and salary programs, benefit programs, the entire gambit of personnel administration," including the responsibility for running the Employer's campaign during Board elections. He also had primary responsibility for handling employee grievances that were filed by unions. As his assistant, Sebastian handled all correspondence that McIntosh had with legal counsel, labor unions, and government regulatory agencies, including the Board and HEW. She made monthly reports to the unions representing the various employee units regarding new hires, terminations, and changes in employee status. She notified the various departments when employees were subject to discharge under labor agreements for failing to maintain good standing. She typed contract proposals on behalf of the Respondent and the final agreements when reached. She also typed wage forecasts prepared by McIntosh for both bargaining unit and nonunit employees. She typed memoranda regarding salary recommendations for management. Drafts and final responses to union grievances were also prepared by her.

Upon the basis of the foregoing, I find that Sebastian meets the Board's consistently applied definition of confidential employee as one who assists and acts in a confidential capacity to a person who formulates, determines, and effectuates management policies in the field of labor relations. *Kleinberg, Kaplan, Wolff, Cohen & Burrows, P.C.*, 253 NLRB 450 (1980); *B. F. Goodrich Co.*, 115 NLRB 722 (1956). The Respondent's argument that Sebastian performed managerial functions and is therefore not protected by the Act is not well taken. With respect to her (1) unemployment compensation functions, which consisted of interviewing supervisors to obtain statements for the reasons for the terminations and assembling this information for a consulting firm that represented the Respondent in unemployment hearings, (2) conducting orientation programs, and (3) conducting salary surveys of other hospitals and employers in the Portland metropolitan area, it is clear they are of a routine nature and do not require the use of independent judgment. Nor does the fact that on one occasion she attended an unemployment compensation hearing alone, which involved a sexual harassment charge, change my conclusion. Sebastian discussed with her immediate supervisor the fact that the supervisor charged with the harassment would not attend the hearing. She was told not to worry about it, that "we would have lost the case anyway." Thus, it

is seen that it was not Sebastian who made the decision not to contest the unemployment compensation claim. In sum, the Respondent has failed to show that Sebastian formulated and implemented management decisions. Accordingly, I find she neither formulates nor effectuates management policies nor exercises sufficient independent discretion of a managerial nature in the performance of her job to be classified as a managerial employee. *Lockheed Aircraft Corp.*, 217 NLRB 573 (1975).

Having concluded Sebastian is a confidential employee but not a managerial employee, the question remains whether, as a confidential employee, she is entitled to the Act's protection. I find it unnecessary to discuss the arguments of the parties over this issue since I have no discretion in this area. In *Los Angeles New Hospital*, 244 NLRB 960, 962 (1979), the Board (at fn. 4) stated:

Additionally, we would note that the Administrative Law Judge's finding that confidential employees do not enjoy protection under the Act, although consistent with the decisions of several courts of appeals, is, with all respect to those courts of appeals, inconsistent with current Board law. See *Hendricks County Rural Electric Membership Corporation*, 236 NLRB 1616 (1978). It is well settled that it is the duty of an administrative law judge "to apply established Board precedent which the Supreme Court has not reversed." *Iowa Beef Packers, Inc.*, 144 NLRB 615, 616 (1965).

While the *Hendricks* case is now before the Supreme Court,<sup>10</sup> I have no discretion but to apply current Board law. I find, therefore, that Sebastian, as a confidential employee, is entitled to the protection of the Act.

*C. Whether the Respondent Terminated Sebastian Because She Engaged in Protected Concerted Activity or Because of Its Concern Over Her Access to Confidential Labor Relations Material*

Paragraph 9 of the complaint alleges the Respondent discharged Sebastian because of its belief that she voted or attempted to vote in the October 18 election, and that, by telling her she could not remain in the position of personnel assistant and by discharging her, the Respondent interfered with the Board's election process. I fail to comprehend how the October 24 and November 30 conduct of the Respondent, as alleged in the complaint, could have "interfered with the NLRB's orderly election process," inasmuch as the election took place on October 18, some 8 days on the one hand, and in excess of a month on the other hand, before the conduct. In this regard, the credible evidence does not establish, as I found earlier, and as alleged in paragraph 5 of the complaint, that Toutges had told Sebastian that she could not vote in the Board election. In any event, it is clear on the record that Sebastian had typed the *Excelsior* list and knew her name was not on it, and was fully aware of the fact the Respondent considered her to be excluded from the voting unit on the basis of her confidential status.

<sup>10</sup> Review granted March 2, 1981, 49 U.S. Law Week 3635.

Further, it is clear from the record that on October 19 McIntosh had Gilmore's statement regarding what transpired on October 18 between Sebastian and the Board agent at the polling place, and knew that Sebastian neither voted nor attempted to vote on October 18. I conclude, therefore, that the General Counsel has failed to prove by a preponderance of the evidence the allegations in paragraphs 5 and 9 of the complaint.

The Respondent admits that, on October 24, Sebastian was told she could not remain in the position of personnel assistant, as alleged in paragraph 6(a), but denies it terminated her on November 30 because she joined, supported, or assisted the Union, or that its action was taken to discourage employees from engaging in such activities, as alleged in paragraphs 6(b) and 7(a) and (b). Rather, the record supports the Respondent's claim that Sebastian was told that because of her active support of the Union she could no longer remain in a confidential position involving labor relations and was encouraged to transfer to a nonconfidential job in the hospital. Sebastian testified that McIntosh told her on October 24 "that I could transfer into another department, but that he did not want me working here in personnel." It is clear that both McIntosh and Toutges encouraged her to transfer to another job instead of leaving the Respondent's employ.

Even though the Board adheres to the position that confidential employees enjoy protection under the Act, it also recognizes the fact that an employer may have a legitimate desire to protect the confidentiality of its labor relations matters from disclosure to others, and is justified in terminating an employee if it suspects the employee may "leak" confidential information. *Illinois Bell Telephone Co.*, 228 NLRB 942 (1977); *Joseph Schlitz Brewing Co.*, 211 NLRB 799 (1974). The right to take action against an employee in order to protect the confidentiality of labor relations material applies to all employees, including "confidential" employees. Thus, even though Sebastian is entitled to the Act's protection as a confidential employee, she may be removed from her job if it is done in order to preserve labor relations confidentiality. The question whether the removal is lawful or not goes to the employer's motivation. In *American Shipbuilding Co. v. NLRB*, 380 U.S. 300, 311 (1965), the Supreme Court stated:

It has long been established that a finding of violation under this section will normally turn on the employer's motivation. . . . But we have consistently construed the section [8(a)(3)] to leave unscathed a wide range of employer actions taken to serve legitimate business interests in some significant fashion, even though the act committed may tend to discourage union membership. See, e.g., *Labor Board v. MacKay Radio & Telegraph Co.*, 304 U.S. 333, 347. Such a construction of Section 8(a)(3) is essential if due protection is to be accorded the employer's right to manage his enterprise.

Clearly, if the Respondent either transferred or terminated Sebastian to punish her because she favored the Union, or to punish others for engaging in protected ac-

tivities, the Respondent violated the Act. If, however, the Respondent's action was taken for fear that she might divulge confidential labor relations information, the Respondent has not violated the Act.

Must an employer wait until an employee has actually divulged confidential information before taking some action to protect itself? Both *Joseph Schlitz Brewing* and *Illinois Bell* indicate the answer is no. In the former, the employer feared or suspected that an employee with a social relationship with a local union officer and whose husband was an active union member employed by another employer might leak confidential information. In the latter, the employer felt there was a possibility that an employee might divulge confidential material to her brother, a shop steward. In addressing the question, the Board noted:

[T]he fact that the possibility does exist in a more than conjectural sense entitles the employer to protect himself against it. [228 NLRB 942 fn. 1.]

Thus, suspicion, doubt, or fear that an employee with actual or potential access to confidential labor relations material might divulge or leak it is sufficient to justify an employer's action against an employee.

There is no evidence the Respondent has had anything but an amicable relationship with the various unions representing its employees, including Local 1092, nor is there any evidence the Respondent harbored any animus or hostility toward Local 1092 or the other unions with whom it has a collective-bargaining relationship. There is also no evidence that the Respondent was attempting to discourage any of its employees from union membership or activities. Rather than discouraging union membership or activities, by encouraging Sebastian to transfer to a nonconfidential job, it could be argued the Respondent was encouraging union membership. Thus, there is no evidence of an illegal pattern of conduct by the Respondent in the context of which its action with respect to Sebastian may be judged. In sum, there is no credible evidence the Respondent sought to discriminate against Sebastian or any other employee because of union or other protected concerted activities. The thrust of the Respondent's action goes to labor relations confidentiality and not to protected or union activity. The absence of evidence tainting the Respondent's motive convinces me that its action in removing Sebastian from her confidential position was based solely on suspicions concerning labor relations confidentiality. Gilmore had reported the fact that Sebastian had appeared at the polling place and stated she hoped the Union won; another employee reported that Sebastian had been politicking in favor of the Union despite McIntosh's admonition to remain neutral for fear the election could be set aside. Sebastian told McIntosh that she would have voted for the Union. His reaction was not to terminate her for having done so, but, in Sebastian's words, "He told me he could not trust me typing his personal and confidential memorandum." Thus, the thrust was not toward protected or union activities, but toward the protection of confidentiality in the field of labor relations. I find, therefore, that there is insufficient evidence to support a finding that Sebastian

was either told she could not remain in the position of personnel assistant, or be terminated, in whole or in part for the purpose of discriminating against her because of her union or concerted activities, or to discourage employees from engaging in such activities. I find, instead, that she was told that she could not remain in the position of personnel assistant for a legitimate business reason, the Respondent's concern over the confidentiality of matters concerning labor relations. Sebastian was encouraged to transfer to a nonconfidential job and failed to do so. Not having engaged in any illegal conduct, the Respondent was under no obligation to effect a transfer for her to a substantially equivalent job.

I therefore find the Respondent did not violate the Act in any respect as alleged in the complaint, and recommend its dismissal.

#### CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) and a

health care institution within the meaning of Section 2(14) of the Act.

2. Local 1092 is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has not engaged in the unfair labor practices alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

#### ORDER<sup>11</sup>

The complaint is dismissed in its entirety.

---

<sup>11</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.